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OFFICE OF PETITIONS

In re Application of :
Ramey et al. : DECISION ON APPLICATION
Application No. 10/622,162 : FOR
Filed: July 15, 2003 : PATENT TERM ADJUSTMENT
Attorney Docket No. 12493-13 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)," filed November 17, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from twenty-four (24) days to one hundred sixty-nine (169) days.

The application for patent term adjustment is DISMISSED.

On August 21, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 24 days. On November 17, 2005, applicants timely submitted the instant application for patent term adjustment¹. Applicants contend that the period of adjustment for Office delay should be 174 days rather than 29 days. Specifically, applicants argue that the first Office Action was withdrawn in favour of the Office Action mailed on March 8, 2005. Applicants request correction of the mailing date of the first action on the merits and re-calculation of the patent term adjustment to take the corrected date into account.

Applicants' argument is not well taken. Pursuant to 37 C.F.R. § 1.702(a),

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted

¹ PALM records indicate that the Issue Fee payment was received on November 28, 2005.

if the issuance of the patent was delayed due to the failure of the Office to:

- (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

On October 14, 2004, the Office mailed a non-final rejection in this application. This was fourteen months and 29 days after the filing of the application on July 15, 2003. Accordingly, a period of adjustment of 29 days was entered.

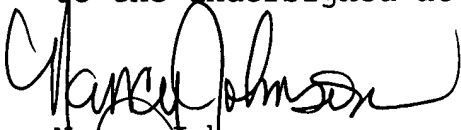
The subsequent mailing of a non-final Office action withdrawing this action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(1) on October 14, 2004.

The determination of patent term adjustment at the time of the mailing of the Notice of Allowance of twenty-four (24) days is correct.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



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